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12 *Counsel for Plaintiff*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16

17 MICHAELE DPHREPAULEZZ on behalf of
 18 herself and all others similarly situated,

19 Plaintiff,

20 v.

21 BAYER HEALTHCARE LLC, and ELANCO
 ANIMAL HEALTH, INC.

22 Defendants.
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Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Michaele Dphrepaulezz (“Plaintiff”), individually and on behalf of other similarly
2 situated individuals, alleges the following Class Action Complaint against defendants Bayer
3 Healthcare LLC (“Bayer”) and Elanco Animal Health, Inc. (“Elanco”) (collectively “Defendants”)
4 for manufacturing, making, marketing, and distributing Seresto brand flea and tick collars (“Seresto
5 Collars” or “Products”), upon personal knowledge as to herself and her own acts and upon
6 information and belief – based upon, *inter alia*, the investigation made by her attorneys – as to all
7 other matters, as follows:

8 INTRODUCTION

9 1. This is a class action on behalf of purchasers of Seresto Collars in the United States.
10 The Products are sold as a flea and tick repellent that prevents fleas and ticks on pets, specifically
11 dogs and cats, by releasing small amounts of pesticides from the collar onto the pets over months at a
12 time. Contrary to representations, Seresto Collars are anything but safe for pets, as they can and
13 have caused pets and their owners to suffer serious injuries. Thus, any benefit of flea or tick
14 prevention that the Products may offer is far outweighed by the consequences to the pet, other pets
15 nearby, to the pet owner, or to others in the immediate vicinity, including family members.



25 2. Seresto Collars are marketed as a part of a pet’s regular health regimen as flea and
26 tick prevention for dogs and cats. All of the Products’ packaging includes representations that lead
27 reasonable consumers to believe that the Products will be safe for their pets and themselves as the
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1 Product's sole purpose is to keep pets safe from fleas and ticks. As shown above, the packaging
2 represents that the Product "Kills and Repels Fleas and Ticks" and offers "8 Month Protection".

3 3. However, as evidenced by the below photo, Seresto Collars' packaging does not
4 include any mention or warning of the serious risks posed by the Products to the pet wearing the
5 collar, to other pets nearby, to the pet owner, or to others in the immediate vicinity, including family
6 members, including risk of irritation, rashes, hair loss, gastrointestinal problems, seizures, and even
7 death:



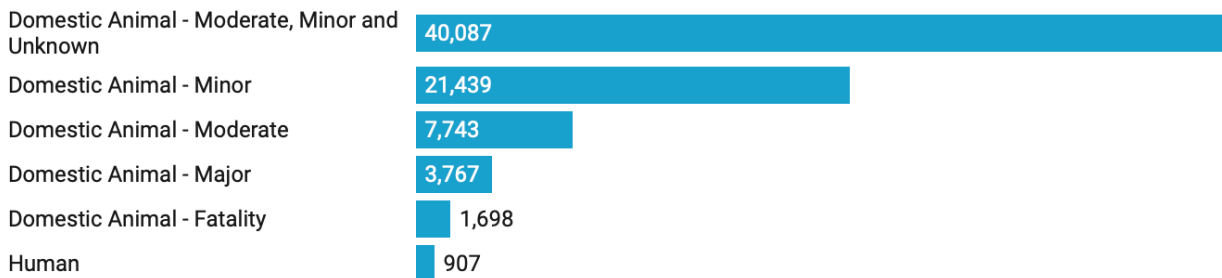
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21 4. Similarly, Defendants' marketing of Seresto Collars fails to disclose the serious risks
22 posed by the Products to the pet wearing the collar, to other pets nearby, to the pet owner, or to
23 others in the immediate vicinity, including family members, including risk of irritation, rashes, hair
24 loss, gastrointestinal problems, seizures, and even death. No reasonable consumer would purchase
25 the Products if the risks were noted on the packaging or other advertising.

26 5. Seresto Collars have been the subject of numerous incidents. According to a report
27 published by USA Today on March 2, 2021 based on documents from the Environmental Protection
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1 Agency (“EPA”), Seresto Collars have been involved in 75,000 incident reports and at least 1,698
 2 pet deaths.¹ Of the 75,000 incidents, nearly 1,000 involved human harm. Even a former EPA staffer
 3 reported that she had “never seen any product that had 75,000 incidents[.]”

4 6. Compared to similar flea and tick collars, Seresto Collars have received an alarming
 5 number of incident reports:

6 **Seresto Incidents**



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 12 Chart: Johnathan Hettinger/Midwest Center for Investigative Reporting • Source: EPA Documents • [Get the data](#) • Created with [Datawrapper](#)

13 7. The high number of incidents is likely related to the synergistic effect of the two
 14 pesticides contained in Seresto Collars: imidacloprid and flumethrin.

15 8. **Imidacloprid** belongs to the neonicotinoid class of insecticides, which are the most
 16 commonly used insecticides on crops in the U.S. Despite neonicotinoids being connected to massive
 17 die-offs of non-target insects such as bees and butterflies, the EPA proposed re-approving
 18 imidacloprid and other class members last year. The pesticide is banned in the European Union for
 19 outdoor use but allowed in pet collars. There is also growing evidence that mammals can be harmed
 20 by these pesticides as well.

21 9. **Flumethrin**, EPA documents show, is only an active ingredient in one product:
 22 Seresto Collars.

23 10. The inert or inactive ingredients in the Products, in combination with Flumethrin and
 24 Imidacloprid may also trigger reactions and/or serious injury.

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 27 ¹ The report can be accessed at
 28 <https://www.usatoday.com/story/news/investigations/2021/03/02/seresto-dog-cat-collars-found-harm-pets-humans-epa-records-show/4574753001/> (last visited April 1, 2021).

1 11. Under the Federal Insecticide, Fungicide and Rodenticide Act, the EPA must
2 determine a pesticide product will not cause “unreasonable effects on the environment.” This
3 determination requires weighing harms versus benefits, including assessments of risks to human
4 health and the environment.

5 12. Like with most pesticides, the data supporting the registration of Seresto Collars was
6 conducted by the company that produced it, Bayer. The majority of the studies were looking at each
7 pesticide individually. However, a 2012 Bayer study found they have a “synergistic effect,” meaning
8 they are **more toxic together** on fleas. The study found that the “unique pharmacological
9 synergism” works as quickly as six hours to prevent ticks from attaching and feeding, preventing
10 disease transmission.

11 13. Additionally, eight companion animal safety studies were conducted by Bayer looking
12 at the effect of Seresto Collars on domestic cats and dogs. The EPA used these studies to approve
13 Seresto Collars on March 16, 2012. Despite the EPA approval, the California Department of
14 Pesticide Regulation reportedly took issue with the validity of two of the studies but approved the
15 collars anyway.

16 14. This is not the first time flea and tick collars have been scrutinized. The EPA has
17 previously approved pesticides in flea and tick collars that have been linked to health issues. For
18 example, in April 2016, pesticide companies voluntarily agreed to stop using propoxur, another
19 pesticide linked to cancer and brain development problems to help protect children’s health, in their
20 flea and tick collars and switched to a different ingredient. In addition, in 2010, the EPA increased
21 label requirements and limited some inert ingredients in spot-on treatments, which are applied to a
22 specific area of a pet after data showed the treatments were causing hundreds of pet deaths, as well as
23 issues such as irritation, rashes and hair loss, gastrointestinal problems and seizures.

24 15. Unfortunately for consumers and their pets, use of the Products is not safe. The
25 Products expose pets to a range of injuries and side effects including, but not limited to, dermal
26 symptoms, such as a rash or hives, neurological symptoms, including numbness, seizures and
27 headaches, and even in some cases, death.

1 16. Even more alarming, the incidents were not limited to pets. Incidents listed by the
2 EPA included:

- 3 a. A 12-year-old boy who slept in a bed with a dog wearing a collar started having
4 seizures and vomiting and had to be hospitalized;
- 5 b. A 67-year-old woman who slept in a bed with a dog wearing a collar reported having
6 heart arrhythmia and fatigue; and
- 7 c. A 43-year-old man put collars on eight dogs and slept in the same bed as four of the
8 dogs. A week later, he developed ear drainage and nasal and throat irritation and was
9 told by a doctor that he had a hole in his ear drum. He removed the dog collars and
10 the symptoms went away. He later reapplied the collars and the symptoms returned.

11 17. Pet owners have complained that their pets have suffered as a result of using the
12 Products on Amazon, where Seresto Collars are sold. Just a few examples quickly highlight how
13 unsafe and unfit for use the Seresto Collars are:

14 ★☆☆☆☆ **STAY AWAY FROM SERESTO COLLAR.**

15 Reviewed in the United States on March 12, 2020

16 **Verified Purchase**

17 People are rite. My little dog started having seizures so I was told she needs an MRI. I spent \$3,300 to have one
18 done and found out parts of her brain are completely gone. I have posted a picture of her MRI so everyone can
19 see for there self. All the white spots except for the two round spots in the middle are missing brain. Since I
20 took off the collar she has had no seizures at all. I did wash her with dawn dish soap to remove any residue
21 from her skin as well. Stay away from these collars. I have spent \$22,000 in vet bills so far. I would take this
22 very serious. That's why I added my little ones MRI so you can see the damage this stupid collar has caused.



21  SRsage

22 ★☆☆☆☆ **Toxic Collar will put your pet down for good**

23 Reviewed in the United States on July 23, 2018

24 **Verified Purchase**

25 I was not aware the multitude of issues that older dogs have with these collars. Apparently it's a wide known
26 issue if you Google it, but these collars contain a toxin that will kill fleas and dogs alike. We had to take our 12
27 year old Maltese to the Vet twice now because of this collar. Use Frontline, or another product over a Seresto
28 Collar.

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★☆☆☆☆ **TOXIC to my small dog**

Reviewed in the United States on October 14, 2018

Verified Purchase

Buyer beware!!! We have used these for our larger dogs with moderate success and no adverse reactions. So we decided to order the small dog version.... BEWARE!!! Days afterwards our dog started behaving oddly not wanting to listen (we thought), not moving when asked and within 4-7 days his back legs started skipping out from under him, he had a hunched bag, difficulty urinating and started coughing up some white foam. We've taken the collar off and although he still is moving slowly, it's faster than before, all bowel and urinary episodes seem to be controlled and he's back to being alert. NEVER again, wish I could get back the \$60 we paid. But I'm just glad I caught the symptoms and started doing some research on adverse side effects.



sarah warda

★☆☆☆☆ **ALMOST KILLED MY DOG - DO NOT BUY!!**

Reviewed in the United States on May 15, 2020

Verified Purchase

I only wish I had done more research and read reviews before I purchased. After wearing the collar for 10 days, my dog suddenly began twitching and convulsing, became very disoriented and erratic, and kept leaning his head back and waving it slowly side to side. He could barely walk and his tongue moved oddly like had suffered a stroke. Thankfully I was present for his traumatic neurological episode and brought him to an animal hospital immediately. The only thing that has recently changed in his routine was the Soresto collar, his first time wearing one. I started doing research, and discovered thousands have reported seizures and even death from the use of these collars. I removed the collar immediately in his condition improved. Within hours he was able to walk again, after 24 hours he finally ate and drink water, and after 48 hours was able to close his eyes fully and sleep, which he hadn't done since the episode. Read the reviews, this is NOT a safe product.

18. While this damage may not be immediately noticeable, and does not manifest every time the Products are used, the Products nonetheless expose every pet, other pets nearby, the pet owner, or to others in the immediate vicinity, including family members when they are used to a considerable risk of a serious adverse reaction and illness. Simply put, the Products are not fit to be sold as a flea and tick medication and Defendants' omitted any warning to the contrary.

19. Beyond the obvious harm to pets and their owners, the harm to consumers is also substantial. Consumers have been economically injured through purchasing an unreasonably dangerous product that does not perform as advertised. Unwitting consumers, including Plaintiff and Class Members, did not receive the benefit of their bargain when purchasing the Products. Furthermore, most, if not all, pet owners prioritize safety for themselves and their pets. Thus,

1 knowing the risks associated with the Products is material to Class Members, and they would not
2 have purchased the Products under the same terms had they known the truth.

3 20. Like most companies, Defendants presumably care about their reputation and
4 regularly monitor on-line consumer reviews because they provide valuable data regarding quality
5 control issues, customer satisfaction, and marketing analytics. Reviews like those copied above
6 would be particularly attention-grabbing for Defendants' management because extreme reviews are
7 sometimes the result of extreme problems, and – just like any other company – Defendants are
8 presumably sensitive to the reputational impact of negative online reviews. Hence, Defendants'
9 management knew or should have known about the above-referenced consumer complaints shortly
10 after each complaint was posted online. Defendants likewise should have been aware of issues
11 through EPA incident reports, the history of banning certain flea and tick collars, and other media
12 reports.

13 21. Despite being aware of the various issues with Seresto Collars through EPA reports,
14 the history of banning certain flea and tick collars, media reports, and consumer complaints,
15 Defendants continue to deny wrongdoing and deny the fact that the Products pose serious safety risks
16 to consumers and their pets. In 2020, and despite the countless notices that the Products were unsafe,
17 Bayer sold the Seresto brand and other products to Elanco upwards of \$7 million dollars. Defendant
18 Bayer knew, or otherwise should have known, about the serious risks posed by Seresto Collars prior
19 to its sale of the Seresto brand to Elanco and thus had a duty to disclose this information to Elanco. in
20 August 2020. Likewise, Defendant Elanco knew or should have known of these issues prior to the
21 purchase in August 2020 because it had an obligation to conduct due diligence. Thus, Defendants
22 put profit ahead of pet owners' and their pets' safety when deciding to sell the Products.

23 22. This is a proposed class action brought by Plaintiff, on behalf of a class of similarly
24 situated individuals, against Defendants for breach of implied warranty, unjust enrichment, and
25 violations of California consumer protection laws.

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1 **TOLLING OF THE STATUTE OF LIMITATIONS**

2 23. Any applicable statute of limitations has been tolled by the deceptive conduct alleged
3 herein. Through no fault or lack of diligence, Plaintiff and Class members were deceived regarding
4 the risks with the Products and could not reasonably discover the risks on their own.

5 24. Plaintiff and Class members could not reasonably discover Defendants' deception
6 with respect to the Products prior to experiencing the risks or being informed of the risks. Within the
7 time period of any applicable statute of limitations, Plaintiff and Class members could not have
8 discovered through the exercise of reasonable diligence that Defendants were concealing the risks
9 associated with the Products.

10 25. Plaintiff and Class members did not discover and did not know of any facts that would
11 have caused a reasonable person to suspect that Defendants were concealing a that the Products were
12 unsafe. As alleged herein, the existence of the safety risk were material to Plaintiff and Class
13 members at all relevant times.

14 26. At all times, Defendants are and were under a continuous duty to disclose to Plaintiffs
15 and Class members the true standard, quality, and safety of the Products at issue and to disclose any
16 potential safety risk associated with the Products.

17 27. Defendants knowingly, actively, and affirmatively concealed the facts alleged herein.
18 Plaintiff and Class members reasonably relied on Defendants' knowing, active, and affirmative
19 concealment.

20 28. For these reasons, all applicable statute of limitations have been tolled based on the
21 discovery rule and Defendants' fraudulent concealment and Defendants are estopped from relying on
22 any statutes of limitations in defense of this action.

23 **JURISDICTION AND VENUE**

24 29. This Court has personal jurisdiction over Defendants. Defendants purposefully
25 availed themselves of the California consumer market and distribute the Products to at least
26 hundreds of locations within this County and thousands of retail locations throughout California,
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1 where the Products are purchased by thousands of consumers every week.

2 30. This Court has original subject-matter jurisdiction over this proposed class action
3 pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act
4 (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action
5 in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class
6 is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum
7 of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of individual
8 members of the proposed Class (as defined herein) are well in excess of \$5,000,000.00 in the
9 aggregate, exclusive of interest and costs.

10 31. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in
11 furtherance of the alleged improper conduct, including the dissemination of false and misleading
12 information and/or omissions regarding the Products, occurred within this District.

13 **PARTIES**

14 32. **Plaintiff Michael Dphrepaulezz** is an individual consumer who, at all times
15 material hereto, was a citizen of California. Plaintiff purchased a Seresto Collar for her dog in or
16 around September 2020 in Arcata, California. In purchasing the Product, Plaintiff relied on
17 Defendants’ false, misleading, and deceptive marketing of the Products as a safe flea and tick
18 medication. The safety of pet products was and is material to Plaintiff. Plaintiff read and followed
19 the instructions of the Product when applying it to her dog. After application, Plaintiff’s one and a
20 half year old service dog became extremely lethargic. Plaintiff removed the collar and the dog
21 recovered.

22 33. Had Defendants disclosed that the Products are not fit to be used as a flea and tick
23 medication because they are unsafe and pose serious safety risks associated with Seresto Collars,
24 including significant hair loss, welts, itching, and, Plaintiff would not have purchased the Product.
25 In all reasonable probability, she would not have agreed to purchase one of the Products, or would
26 have sought materially different terms, had she known that the truth. Defendants’
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1 misrepresentations and omissions were substantial factors in Plaintiff's decision to purchase the
2 Product.

3 34. As a result, Plaintiff experienced financial loss when purchasing the Products
4 because they did not perform as advertised. She did not receive the Products she intended to
5 purchase: flea and tick collars which were fit for their ordinary purpose—the safe administration of
6 flea and tick preventatives to her dogs. Therefore, she did not receive the benefit of her bargain.

7 35. Plaintiff remains interested in purchasing a safe flea and tick repellent and would
8 consider the Products in the future if Defendants provided a product that would not cause serious
9 side effects and that was safe.

10 36. **Defendant Bayer Healthcare LLC** is the former owner of the Seresto brand of
11 collars, and sold the brand to Defendant Elanco Animal Health, Inc. in 2020. Bayer is a Delaware
12 corporation and is headquartered in Whippany, New Jersey.

13 37. **Defendant Elanco Animal Health, Inc.** is the current owner of the Seresto brand.
14 Elanco is an Indiana corporation and is headquartered in Greenfield, Indiana. Since purchasing the
15 Seresto brand in 2020, Elanco has sold the Products at issue.

16 **CLASS ALLEGATIONS**

17 38. Plaintiff seeks to represent a class defined as all persons in the United States who
18 purchased the Products (the "Class"). Excluded from the Class are persons who made such
19 purchases for purpose of resale.

20 39. Plaintiff also seeks to represent a Subclass of all Class Members who purchased the
21 Products in California (the "California Subclass").

22 40. At this time, Plaintiff does not know the exact number of members of the Class and
23 California Subclass; however, given the nature of the claims and the number of retail stores in the
24 United States selling the Products, Plaintiff believes that Class and California Subclass members
25 are so numerous that joinder of all members is impracticable.
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1 41. There is a well-defined community of interest in the questions of law and fact
2 involved in this case. Questions of law and fact common to the members of the Class that
3 predominate over questions that may affect individual Class members include:

- 4 a. whether Defendants misrepresented and/or failed to disclose material facts
5 concerning the Products;
- 6 b. whether Defendants' conduct was unfair and/or deceptive;
- 7 c. whether Defendants have been unjustly enriched as a result of the unlawful,
8 fraudulent, and unfair conduct alleged in this Complaint such that it would
9 be inequitable for Defendants to retain the benefits conferred upon
10 Defendants by Plaintiff and the Class;
- 11 d. whether Defendants breached implied warranties to Plaintiff and the Class;
12 and
- 13 e. whether Plaintiff and the Class have sustained damages with respect to the
14 common-law claims asserted, and if so, the proper measure of their damages.

15 42. Plaintiff's claims are typical of those of the Class because Plaintiff, like all members
16 of the Class, purchased, in a typical consumer setting, Defendants' product and Plaintiff sustained
17 damages from Defendants' wrongful conduct.

18 43. Plaintiff will fairly and adequately protect the interests of the Class and has retained
19 counsel that is experienced in litigating complex class actions. Plaintiff has no interests which
20 conflict with those of the Class or the California Subclass.

21 44. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy.

23 45. The prerequisites to maintaining a class action for equitable relief are met as
24 Defendants have acted or refused to act on grounds generally applicable to the Class and the
25 California Subclass, thereby making appropriate equitable relief with respect to the Class and the
26 California Subclass as a whole.

1 54. Defendants' unfair or deceptive acts or practices occurred repeatedly in Defendants'
2 trade or business and were capable of deceiving a substantial portion of the purchasing public.

3 55. Defendants knew that the Seresto Collars were unsafe and posed serious, continuous
4 safety risks to consumers and their pets.

5 56. Defendants were under a duty to Plaintiff and the Class Members to disclose that the
6 Seresto Collars were, in fact, unsafe because: (a) Defendants were in a superior position to know
7 the true state of facts about the unsafe quality of the Seresto Collars; (b) Plaintiff and Class
8 Members could not reasonable have been expected to learn or discover that the Seresto Collars
9 were unsafe; (c) Defendants knew that Plaintiff and Class Members could not reasonably have
10 been expected to learn or discover the unsafe quality of the Seresto Collars, except by suffering
11 injury from the Products' use; and (d) Defendants actively concealed from the consuming public
12 and failed to disclose the unsafe quality of the Seresto Collars.

13 57. In failing to disclose the serious safety risks posed by the Seresto Collars at the time
14 of sale, Defendants have knowingly and intentionally concealed material facts and breached their
15 duty not to do so.

16 58. As a result of engaging in such conduct, Defendants have violated California Civil
17 Code § 1770(a)(5), (a)(7), and (a)(9).

18 59. Plaintiff and the members of the California Subclass have suffered harm as a result
19 of these violations of the CLRA because they have paid monies for Products that they otherwise
20 would not have incurred or paid.

21 60. On April 2, 2021, CLRA demand letters were sent to Defendants via certified mail
22 that provided notice of Defendants' violation of the CLRA and demanded that within thirty (30)
23 days from that date, Defendants correct, repair, replace or other rectify the unlawful, unfair, false
24 and/or deceptive practices complained of herein. The letters also stated that if Defendants refused
25 to do so, a complaint seeking damages in accordance with the CLRA would be filed.

1 the Products if they knew the truth about the product and that the product they received was worth
2 substantially less than the product they were promised and expected.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment on behalf of herself and members of the Class
5 and California Subclass as follows:

- 6 A. For an order certifying the Class and the California Subclass under Rule 23 of the
7 Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class
8 and California Subclass and Plaintiff's attorneys as Class Counsel to represent the
9 Class and California Subclass members;
- 10 B. For an order declaring that Defendants' conduct violates the statutes referenced
11 herein;
- 12 C. For an order finding in favor of Plaintiff, the Class, and the California Subclass on
13 all counts asserted herein;
- 14 D. For compensatory, statutory, and punitive damages in amounts to be determined by
15 the Court and/or jury;
- 16 E. For injunctive relief enjoining the illegal acts detailed herein;
- 17 F. For prejudgment interest on all amounts awarded;
- 18 G. For an order of restitution and all other forms of equitable monetary relief;
- 19 H. For an order awarding Plaintiff and the Class and California Subclass their
20 reasonable attorneys' fees and expenses and costs of suit.

21 **JURY TRIAL DEMANDED**

22 Plaintiff demands a trial by jury on all claims so triable.

23 Dated: April 5, 2021

24 Respectfully submitted,

25 **BURSOR & FISHER, P.A.**

26 By: /s/ Yeremey Krivoshey
27 Yeremey Krivoshey

28 L. Timothy Fisher (State Bar No. 191626)
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